IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.17039 of 2003
AND
SPECIAL CIVIL APPLICATION No.17091 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KARTIK MAHESHKUMAR MEHTA

Versus

COLLECTOR BHAVNAGAR DISTRICT

Appearance:

1. Special Civil Application No. 17039 of 2003
MR SP MAJMUDAR for MS NIYATI K SHAH for Petitioner No. 1-4
MR KUNJAL D PANDYA, AGP for Respondent Nos. 1-3

2. Special Civil Application No. 17091 of 2003
MR SP MAJMUDAR for MS NIYATI K SHAH for Petitioner No. 1-4
MR KUNJAL D PANDYA, AGP for Respondent Nos. 1-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 12/08/2004

COMMON ORAL JUDGEMENT

Since, common issue is involved in both these petitions, the same are being disposed of by this common

judgment.

2. RULE. Mr.Kunjal D. Pandya, learned AGP, appears and waives service of rule on behalf of the respondents. With the consent of the respective parties, the matters are taken up for final hearing today.

3. In these petitions under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgments and orders dated 08/22-10-2003 passed by the revisional authority i.e. Joint Secretary (Appeals), Revenue Department, State of Gujarat in Revision Application Nos.34 of 2003 and 35 of 2003 whereby dismissing the said revision applications and confirming the orders dated 07-08-2003 passed by the Collector, Bhavnagar.

4. Mr.S.P.Majmudar, learned advocate, appears for Ms.Niyati Shah, learned advocate for the petitioners, has submitted that the judgments and orders passed by revisional authority are absolutely illegal and contrary to Section 211 of the Bombay Land Revenue Code, 1879. Mr.Majmudar further submitted that in fact while considering the case of the petitioners' applications for stay, the entire revision applications are dismissed without giving any opportunity of hearing to the petitioners for final disposal. He has further submitted that even before passing the impugned judgments and orders even the record and proceedings were not called for and without even calling for record and proceedings and without verifying the record, the revision applications are dismissed. In support of his argument he has relied upon a decision of this Court in the case of Zabir Mohmad Hafezi Ismail Patel & Ors. Vs. State of Gujarat & Ors., 1997 (1) GLR 140 and, therefore, requested to allow the present petitions and to quash and set aside the judgments and orders passed by the revisional authority.

5. On the other hand, Mr.Kunjal D. Pandya, learned AGP, has tried to argue the matters on merits. Mr.Pandya has stated that in fact there is no case and there is a breach of conditions and, therefore, the revisional authority was justified in dismissing the revisional applications.

6. Apart from the fact that while considering the applications for stay, the revisional authority has decided the revision applications finally without giving any opportunity of hearing to the petitioners for final disposal, as in view of the fact that while dismissing the revision applications, record and proceedings of the

cases were not called for, which is must under Section 211 of the Bombay Land Revenue Code and, therefore this Court proposes to dispose of the present petitions by quashing and setting aside the judgments and orders passed by the revisional authority and by remanding the matters to the revisional authority for deciding afresh in accordance with law and on merits, after calling for the record and proceedings of both the cases as required under Section 211 of the Bombay Land Revenue Code.

7. Considering the judgment of Zabir Mohmad Hafezi Ismail Patel (supra) and from the orders itself it is clear that the revision applications came to be dismissed without calling for the record and proceedings and without verifying the record. Under these circumstances, the judgments and orders dated 08/22-10-2003 passed by the revisional authority i.e. Joint Secretary (Appeals), Revenue Department, State of Gujarat in Revision Application Nos.34 of 2003 and 35 of 2003 whereby dismissing the said revision applications and confirming the orders dated 07-08-2003 passed by the Collector, Bhavnagar require to be quashed and set aside and accordingly the same are quashed and side. The matters are now remanded to the revisional authority for deciding the same afresh in accordance with law and on merits, after verifying due procedure under Section 211 of the Bombay Land Revenue Code. Such exercise is required to be done within a period of 03 (three) months from the date of receipt of copy of this order.

8. For the reasons stated above, both the petitions stand allowed accordingly. Rule is made absolute to the aforesaid extent. No order as to costs.

Office is directed to place copy of this order in connected matters.

Sd/-

[M.R.SHAH, J]

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'Bhavesh'